



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNETC

### Introduction

This hearing was convened in response to an application by the Tenant claiming a monetary order for compensation and recovery of the filing fee pursuant to section 67 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Tenant’s application sets out a claimed amount for compensation arising from a notice to end tenancy for landlord’s use dated August 26, 2020 (the “Notice”) and includes, under the same claim, additional amounts for loss of enjoyment and for the landlord’s unauthorized entry.

Rule 2.3 of the Rules of Procedure provides that claims in an application must be related to each other. As the claims for loss of enjoyment and for the landlord’s unauthorized entry are in relation to events that that occurred during the tenancy, I consider that they are not related to the claim for compensation under the Notice. I therefore dismiss these claims with leave to reapply. Leave to reapply is not an extension of any limitation period.

### Issue(s) to be Decided

Is the Tenant entitled to compensation claimed in relation to the Notice?

Background and Evidence

The following are agreed facts: The tenancy started on March 1, 2017 and ended on October 31, 2020. Rent of \$1,500.00 was payable on the first day of each month. The Tenant was given the Notice that sets out an effective date of October 31, 2020. The reason stated on the Notice is that the landlord or the landlord's spouse will occupy the unit.

The Landlord states that they moved into the unit on November 1, 2019 and has occupied the unit as a residence since that date. The Landlord states that they often spend time over dinners or overnight at a parent's house as the parent is elderly with health issues, is dealing with the death of the spouse and needs the family support. The Landlord provides witness letters in relation to the Landlord's movement of large furniture into the unit in November 2020 and in relation to their knowledge of the Landlord residing at the unit since that date. The Landlord provides copies of utility bills in the Landlord's name showing usage of those utilities from November 2020 onward. The Landlord provides copies of vehicle and driver insurance documents setting out the unit's address as the Landlord's residence.

The Tenant submits that the Landlord has not occupied the unit. The Tenant states that there is no evidence from the Tenant to support that the Landlord has not occupied the unit. The Tenant states that the electrical bill sets out a mailing address that is not the unit address. The Tenant states that the Landlord's evidence of hydro and water usage is significantly less than was paid by the Tenants for the same time periods. The Tenant states that if the Landlord was living in the unit the Landlord would have had more utility bills. The Tenant argues that the Landlord has not provided sufficient evidence of occupation of the unit.

The Landlord states that they are very good at water conservation from the water held in the tanks and that there is only one person using the water while during the tenancy there were two persons using the water. The Landlord states that it uses other sources

of water for drinking and that a cistern is used for outside use of water. The Landlord states that the water for the water tanks was not included in the Tenants' rent. The Landlord states that they are also using a different water company than that used by the Tenants and that the Landlord obtained a very good deal for the water purchased. The Landlord states that they have used the mailing address on the utility bill since 2017 despite living elsewhere at the time. The Landlord states that the mailing addresses were changed on the utility bills as they came is and within the first month of their occupation of the unit. The Landlord states that since they occupied and continue to occupy the unit, there are no extenuating factors that prevented the occupation of the unit.

The Tenant claims \$18,000.00 as compensation pursuant to the Notice and \$49.99 as the cost of photos provided as evidence for these proceedings.

### Analysis

Section 51(2) of the Act provides that the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Tenants provided no supporting evidence of their utility usage. Further, there is no evidence to rebut the Landlord's evidence of frugality or that the Landlord's evidence of utility consumption is less than an average consumer in the same circumstances. The Tenants provided no other evidence to rebut the Landlord's evidence of occupation of

the unit. For this reason and given the Landlord's evidence, in particular, the witness letters, I find on a balance of probabilities that the Tenants have not substantiated that the Landlord did not occupy the unit for at least 6 months. The Tenant's claim for compensation is dismissed.

As nothing in the Act provides for a party to claim any proceedings costs other than for the recovery of the filing fee and as the Tenant is claiming costs for providing evidence in the form of photos, I dismiss this claim. As the Tenant's claims have not met with success at this hearing, I dismiss the claim for recovery of the filing fee.

### Conclusion

The Tenants' claims for compensation pursuant to the Notice and for photo costs are dismissed.

The Tenants' claims for breach of quiet enjoyment and unlawful entries are dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 1, 2021

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Residential Tenancy Branch